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असाधारण

EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 8th January, 2019:—

BILL NO. 2 OF 2019

A Bill further to amend the Trade Unions Act, 1926.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Trade Unions (Amendment) Act, 2019.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

16 of 1926.

2. In the Trade Unions Act, 1926 (hereinafter referred to as the principal Act), after section 10, the following section shall be inserted, namely:—

Insertion of
new section
10A.

"10A. (1) Where the Central Government is of the opinion that it is necessary or expedient to recognise a Trade Union or a federation of Trade Unions as Central Trade Union at the Central level, it may recognise such Trade Union or a federation of Trade Unions as the Central Trade Union in such manner and for such purposes as may be prescribed and if any dispute arises in relation to such recognition, it shall be decided by such authority in such manner as may be prescribed by the Central Government.

Recognition of
Trade Unions at
Central and
State level.

(2) Where the State Government is of the opinion that it is necessary or expedient to recognise a Trade Union or a federation of Trade Unions as the State Trade Union at the State level, it may recognise such Trade Union or a federation of Trade Unions as the State Trade Union in such manner and for such purposes as may be prescribed and if any dispute arises in relation to such recognition, it shall be decided by such authority in such manner as may be prescribed by the State Government."

Amendment of
section 29.

3. In section 29 of the principal Act, in sub-section (2), after clause (b), the following clause shall be inserted, namely:—

"(ba) the manner and purposes for recognition of Trade Union or federation of Trade Unions as Central Trade Union or, as the case may be, State Trade Union and the authority to decide disputes arising out of such recognition including the manner of deciding such disputes;"

STATEMENT OF OBJECTS AND REASONS

The Trade Unions Act, 1926 (the said Act) has been enacted to provide for registration of Trade Unions and in certain respects to define the law relating to registered Trade Unions.

2. Being a pre-independence legislation, the said Act provides only for registration of Trade Unions. There is no provision for recognition of Trade Unions in the Act. However, presently recognition of Trade Union is governed by instructions and guidelines in the Code of Discipline evolved in 1958 as voluntarily accepted by employers and employees.

3. Since there are demands from various quarters for providing statutory force to the recognition of Trade Unions so that their role will become more important in maintaining harmonious industrial relations in the country, the Government proposes to amend the said Act to make provisions for recognition of Trade Unions or federation of Trade Unions at Central and State level. It is also proposed to empower the appropriate Government to make regulations to facilitate the manner and purposes of such recognition.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;

SANTOSH KUMAR GANGWAR.

The 3rd January, 2019.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to insert clause (ba) in sub-section (2) of section 29 of the Trade Unions Act, 1926 so as to empower the appropriate Government to make regulations to provide the manner and purposes for recognition of Trade Unions or federation of Trade Unions as Central Trade Union or, as the case may be, State Trade Union and the authority to decide disputes arising out of such recognition including the manner of deciding such disputes.

2. The matters in respect of which rules may be made by the appropriate Government are matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 1 OF 2019

A Bill further to amend the Protection of Children from Sexual Offences Act, 2012.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

Short title
and
commencement.

1. (1) This Act may be called the Protection of Children from Sexual Offences (Amendment) Act, 2019.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

32 of 2012.

2. In the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the principal Act), section 4 shall be renumbered as section 4 (I) thereof and—

Amendment
of section 4.

(a) in sub-section (I) as so renumbered, for the words "seven years", the words "ten years" shall be substituted;

(b) after sub-section (I), the following sub-sections shall be inserted, namely:—

"(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine.

(3) The fine imposed under sub-section (I) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."

3. In section 5 of the principal Act,—

Amendment
of section 5.

(I) in clause (j),—

(A) in sub-clause (i), the word "or" occurring at the end shall be omitted;

(B) in sub-clause (iii), the word "or" occurring at the end shall be omitted;

(C) after sub-clause (iii), the following sub-clause shall be inserted, namely:—

"(iv) causes death of child; or";

(II) in clause (s), for the words "sectarian violence", the words "sectarian violence or during a situation of natural calamity" shall be substituted.

4. For section 6 of the principal Act, the following section shall be substituted, namely:—

Substitution
of new section
for section 6.

"6.(I) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.

Punishment
for aggravated
penetrative
sexual assault.

(2) The fine imposed under sub-section (I) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."

5. In section 9 of the principal Act,—

Amendment
of section 9.

(i) in clause (d), for the words "such jail or remand home or protection home or observation home or other place of custody or care and protection", the words "such jail or remand home or protection home or observation home or other place of custody or care and protection or causes sexual assault, by giving any payment or benefits to the child or to any other person exercising control over the child, or by receiving any payment or benefits for the said purpose" shall be substituted;

(ii) in clause (s), for the words "sectarian violence", the words "sectarian violence or during a situation of natural calamity" shall be substituted;

(iii) in clause (u), for the words "in public," the words "in public; or" shall be substituted;

(iv) after clause (u), the following clause shall be inserted, namely:—

"(v) whoever gives, or administers, or causes to be given, or administered, any hormone or any chemical substance, to a child with the intent that such child attains early sexual maturity for the purpose of penetrating sexual assault,".

Substitution
of new
section for
section 14.

6. For section 14 of the principal Act, the following section shall be substituted, namely:—

Punishment
for using
child for
pornographic
purposes.

"14. (1) Whoever uses a child or children for pornographic purposes shall be punished with imprisonment for a term which shall not be less than five years and shall also be liable to fine, and in the event of second or subsequent conviction with imprisonment for a term which shall not be less than seven years and also be liable to fine.

(2) Whoever using a child or children for pornographic purposes under sub-section (1), commits an offence referred to in section 3 or section 5 or section 7 or section 9 by directly participating in such pornographic acts, shall be punished for the said offences also under section 4, section 6, section 8 and section 10, respectively, in addition to the punishment provided in sub-section (1)."

Substitution
of new
section for
section 15.

7. For section 15 of the principal Act, the following section shall be substituted, namely:—

Punishment for
storage of
pornographic
material
involving child.

"15. (1) Any person, who stores or possesses pornographic material in any form involving a child but fails to delete or destroy or report the same to the designated authority as may be prescribed, shall be liable to fine not less than one thousand rupees, and in the event of second or subsequent offence, with fine which shall not be less than five thousand rupees.

(2) Any person, who stores or possesses pornographic material in any form involving a child for transmitting or propagating or distributing in any manner at any time except for the purpose of reporting, as may be prescribed, or for use as evidence in court, shall be punished with imprisonment of either description which may extend to three years, or with fine, or with both.

(3) Any person, who stores or possesses pornographic material in any form involving a child for commercial purpose shall be punished on the first conviction with imprisonment of either description which shall not be less than three years which may extend to five years, or with fine, or with both, and in the event of second or subsequent conviction, with imprisonment of either description which shall not be less than five years which may extend to seven years and shall also be liable to fine."

Amendment of
section 42.

8. In section 42 of the principal Act, for the figures, letter and words "376E or section 509 of the Indian Penal Code", the figures, letters and words "376E, section 509 of the Indian Penal Code or section 67B of the Information Technology Act, 2000" shall be substituted.

45 of 1860.

21 of 2000.

Amendment of
section 45.

9. In section 45 of the principal Act, in sub-section (2), clause (a) shall be re-lettered as clause (ab) thereof and before clause (ab) as so re-lettered, the following clauses shall be inserted, namely:—

"(a) the manner of deleting or destroying or reporting about pornographic material in any form involving a child to the designated authority under sub-section (1) of section 15;

(aa) the manner of reporting about pornographic material in any form involving a child under sub-section (2) of section 15;".

STATEMENT OF OBJECTS AND REASONS

The Protection of Children from Sexual Offences Act, 2012 (the said Act) has been enacted to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

2. The said Act is gender neutral and regards the best interests and welfare of the child as matter of paramount importance at every stage so as to ensure the healthy physical, emotional, intellectual and social development of the child.

3. However, in the recent past incidences of child sexual abuse cases demonstrating the inhumane mind-set of the abusers who have been barbaric in their approach towards young victims is rising in the country. Children are becoming easy prey because of their tender age, physical vulnerabilities and inexperience of life and society. The unequal balance of power leading to the gruesome act may also detriment the mind of the child to believe that might is right and reported studies establish that children who have been victims of sexual violence in their childhood become more abusive later in their life. The report of the National Crime Records Bureau for the year 2016 indicate increase in the number of cases registered under the said Act from 44.7 per cent. in 2013 over 2012 and 178.6 per cent. in 2014 over 2013 and no decline in the number of cases thereafter.

4. The Supreme Court, in the matter of *Machhi Singh vs. State of Punjab* [1983 (3) SCC 470], held that when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so in rarest of rare cases when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The same analogy has been reiterated by the Supreme Court in the matter of *Devender Pal Singh vs. State (NCT of Delhi)* [AIR 2002 SC 1661] wherein it was held that when the collective conscience of the community is so shocked, the court must award death sentence.

5. In the above backdrop, as there is a strong need to take stringent measures to deter the rising trend of child sex abuse in the country, the proposed amendments to the said Act make provisions for enhancement of punishments for various offences so as to deter the perpetrators and ensure safety, security and dignified childhood for a child. It also empowers the Central Government to make rules for the manner of deleting or destroying or reporting about pornographic material in any form involving a child to the designated authority.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 1st January, 2019.

VIRENDRA KUMAR.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Bill seeks to amend sub-section (2) of section 45 of the Protection of Children from Sexual Offences Act, 2012 so as to empower the Central Government to make rules to provide for the manner of deleting or destroying or reporting about pornographic material in any form involving a child to the designated authority under sub-section (1) of section 15 and the manner of reporting about pornographic material in any form involving a child under sub-section (2) of the said section.

2. The matters in respect of which rules may be made by the Central Government are matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 3 OF 2019

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (One Hundred and Twenty-fourth Amendment) Act, 2019. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In article 15 of the Constitution, after clause (5), the following clause shall be inserted, namely:— Amendment of article 15.

‘(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

Explanation.—For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.'.

Amendment of
article 16.

3. In article 16 of the Constitution, after clause (5), the following clause shall be inserted, namely:—

"(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category."

STATEMENT OF OBJECTS AND REASONS

At present, the economically weaker sections of citizens have largely remained excluded from attending the higher educational institutions and public employment on account of their financial incapacity to compete with the persons who are economically more privileged. The benefits of existing reservations under clauses (4) and (5) of article 15 and clause (4) of article 16 are generally unavailable to them unless they meet the specific criteria of social and educational backwardness.

2. The directive principles of State policy contained in article 46 of the Constitution enjoins that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

3. *Vide* the Constitution (Ninety-third Amendment) Act, 2005, clause (5) was inserted in article 15 of the Constitution which enables the State to make special provision for the advancement of any socially and educationally backward classes of citizens, or for the Scheduled Castes or the Scheduled Tribes, in relation to their admission in higher educational institutions. Similarly, clause (4) of article 16 of the Constitution enables the State to make special provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

4. However, economically weaker sections of citizens were not eligible for the benefit of reservation. With a view to fulfil the mandate of article 46, and to ensure that economically weaker sections of citizens to get a fair chance of receiving higher education and participation in employment in the services of the State, it has been decided to amend the Constitution of India.

5. Accordingly, the Constitution (One Hundred and Twenty-fourth Amendment) Bill, 2019 provides for reservation for the economically weaker sections of society in higher educational institutions, including private institutions whether aided or unaided by the State other than the minority educational institutions referred to in article 30 of the Constitution and also provides for reservation for them in posts in initial appointment in services under the State.

6. The Bill seeks to achieve the above objects.

NEW DELHI;
The 7th January, 2019.

THAWARCHAND GEHLOT.

SNEHLATA SHRIVASTAVA
Secretary General